

April 10, 2002

AGAR ADVISORY

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT
PROCUREMENT POLICY DIVISION
AGAR ADVISORY NO. 43**

**Protests, Claims and Alternative Dispute Resolution (ADR) as Factors in
Past Performance and Source Selection Decisions**

INTRODUCTION: The purpose of this Agriculture Acquisition Regulation (AGAR) Advisory is to disseminate Office of Federal Procurement Policy (OFPP) Memorandum dated April 1, 2002.

SUMMARY AND SPECIFIC ISSUES: The referenced OFPP Memorandum (copy attached) discusses concerns about the consideration federal agencies give contractor protests, claims and ADR practices in past performance evaluations and source selection decisions; and states that “. . . the filing of protests, the filing of claims, or the use of ADR must not be considered by an agency in either past performance evaluations or source selection decisions.”

If you have questions about this advisory, please contact Pat Honda by telephone at (202) 720-8924, by fax at (202) 720-8972, or by email to phonda@usda.gov. This advisory is available on the USDA homepage at <http://www.usda.gov/procurement/policy/advisories.html>.

EXPIRATION DATE: Effective until canceled.

[END]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

April 1, 2002

MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM:

Angela B. Styles
Administrator

SUBJECT:

Protests, Claims, and Alternative Dispute Resolution (ADR)
as Factors in Past Performance and Source Selection Decisions

While many agencies and contractors have successfully resolved contentious contract issues by effectively using a wide range of dispute resolution techniques, concerns have arisen regarding the consideration federal agencies give contractor protests, claims, and ADR practices in past performance evaluations and source selection decisions. For the reasons stated below, the filing of protests, the filing of claims, or the use of ADR, must not be considered by an agency in either past performance evaluations or source selection decisions.

Federal agencies should continue to work with contractors to avoid or minimize unnecessary protests and claims, and encourage the use of ADR, where appropriate. At the same time, contractors should feel free to avail themselves of the rights provided to them by law. Accordingly, please emphasize to your agency's acquisition personnel, especially source selection officials, that:

1. Contractors may not be given "downgraded" past performance evaluations for availing themselves of their rights by filing protests and claims or for deciding not to use ADR; and
2. Contractors may not be given more "positive" past performance evaluations for refraining from filing protests and claims or for agreeing to use ADR.

I appreciate your assistance in ensuring that this memorandum is distributed to the appropriate personnel in your agency.

cc: Agency General Counsels